

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
FOR THE FOURTH CIRCUIT  
Richmond, VA (09/17/2013 - 09/20/2013 Session)

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12-2154      [Briefs](#)  
First South Bank v. Bank of the Ozarks  
( Gergel )  
Associations:    12-2185

CIVIL:    Whether the Participation Agreement entered into by the parties is ambiguous as to the recouping of expenses incurred after default; related issues.

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12-4362      [Briefs](#)  
US v. Leroy Hemingway  
( Harwell )

CRIMINAL:    Whether a South Carolina conviction for assault and battery of a high and aggravated nature is categorically a crime of violence for sentencing purposes.

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12-4760      [Briefs](#)  
US v. Fabian Montes-Flores  
( Gergel )

CRIMINAL:    Whether district court erred in classifying South Carolina conviction for assault and battery of a high and aggravated nature as crime of violence under modified categorical approach; other issues.

PANEL I  
Red Courtroom (Room 412)  
9:30 a.m.

Tuesday, September 17, 2013

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12-2091	<a href="#">Briefs</a>	CIVIL: Whether the district court erred by granting summary judgment to the defendant on Harris' Title VII and ADEA claims.
Alexander Harris v. Powhatan County School ( Gibney )		
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12-1156	<a href="#">Briefs</a>	BANKRUPTCY: Whether one spouse can strip a lien in his individual bankruptcy case when the underlying property is held by the spouses as tenants by the entireties if the non-debtor spouse joins the adversary complaint.
Jose Alvarez v. HSBC Bank USA, N.A. ( Garbis )		
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11-1447	<a href="#">Briefs</a>	IMMIGRATION: Whether the definition of "aggravated felony," as amended by the Illegal Immigration Reform and Immigrant Responsibility Act, should be retroactively applied to Tobar-Barrera's petition.
Erwin Tobar-Barrera v. Eric Holder, Jr.		
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13-1021	<a href="#">Briefs</a>	SOCIAL SECURITY: Whether district court erred in finding appellee per se disabled and awarding benefits.
Jimmy Radford v. Carolyn W. Colvin ( Boyle )		

PANEL II  
Butzner En Banc Courtroom 201  
9:30 a.m.

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12-2366	<a href="#">Briefs</a>	TITLE VII: Whether the district court erred in granting summary judgment on discrimination, retaliation, and hostile work environment claims.
Adrian Muldrow v. Schmidt Baking Company, ( Quarles )		
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12-1953	<a href="#">Briefs</a>	ADMIRALTY LAW: Whether the district court erred in granting Coast Guard's motion for summary judgment; other issues.
Susan Turner v. US ( Boyle )		
<hr/>		
12-2367	<a href="#">Briefs</a>	IMMIGRATION: Whether the Board of Immigration Appeals abused its discretion in declining to equitably toll deadline for filing motion to reopen.
Svetlana Kuusk v. Eric Holder, Jr.		

PANEL III  
Tan Courtroom (Room 223)  
9:30 a.m.

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12-1802	<a href="#">Briefs</a>	BANKRUPTCY: Whether the bankruptcy court erred in its application of 11 U.S.C. sections 1522(a) and 365(n) in denying comity to German insolvency proceedings.
Dr. Michael Jaffe v. Samsung Electronics ( Mayer )		
13-1024	<a href="#">Briefs</a>	BANKRUPTCY: Whether inheritance acquired more than 180 days after commencement of Chapter 13 bankruptcy case is excluded from bankruptcy estate pursuant to sections 541(a)(5) and 1306(a).
Rickey Carroll v. John Logan ( Leonard )		
12-2095	<a href="#">Briefs</a>	IMMIGRATION: Whether evidence is sufficient to support application of persecutor bar to relief of special cancellation of removal under NACARA.
Nicolas Pastora v. Eric Holder, Jr.		
12-0342	<a href="#">Briefs</a>	CLASS ACTION FAIRNESS ACT: Whether allegation of wrongful conduct by unidentified West Virginia property appraisers converted case into a "local controversy" ineligible for federal jurisdiction; other issues.
Quicken Loans Incorporated v. Phillip Alig		

Associations: 13-1073, 13-1077

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Tweed Courtroom (Room 414-D)  
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12-1761	<a href="#">Briefs</a>	FEDERAL PROCEDURE: Whether district court erred in ruling insured was a "nominal party" as applied to "rule of unanimity" regarding consent to notice of removal.
Hartford Fire Insurance Co v. Harleysville ( Gergel )		

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12-1739	<a href="#">Briefs</a>	TAX LAW: Issues related to assessment of penalties under section 6672 of the I.R.C.
Mary Johnson v. US ( Chasanow )		

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12-2370	<a href="#">Briefs</a>	MILLER ACT: Whether district court erred in finding appellee proper Miller Act claimant; other issues.
L&W Supply Corporation v. Greenway ( Ellis )		

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12-4176	<a href="#">Briefs</a>	CRIMINAL: Whether vehicle stop was supported by probable cause; whether pre-Miranda statement by handcuffed arrestee was made in response to interrogation.
US v. Eric Johnson ( Blake )		

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PANEL V  
Gold Courtroom (Room 348)  
9:30 a.m.

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12-1414	<a href="#">Briefs</a>	CIVIL: Propriety of district court rulings admitting and excluding various evidence in excessive force case.
Jerrell Johnson v. Stephen Rankin ( Smith )		
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12-4531	<a href="#">Briefs</a>	CRIMINAL: Whether the district court erred in considering uncorroborated double-hearsay evidence from paid informants in determining drug quantity for sentencing purposes.
US v. Kendrick Crawford ( Dever )		
<hr/>		
12-2259	<a href="#">Briefs</a>	IMMIGRATION: For cancellation of removal does "departure under threat of removal" disrupt "continues physical presence" if absence does not constitute a break as defined by 8 U.S.C. section 1229b; other issues.
Baltazar Garcia v. Eric Holder, Jr.		
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12-8148	<a href="#">Briefs</a>	CONSTITUTIONAL LAW: Whether PLRA cap on attorney's fees, contained in 28 U.S.C. section 1997e(d)(2), is constitutional.
Jamey Wilkins v. Officer Gaddy ( Conrad )		

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Red Courtroom (Room 412)  
9:30 a.m.

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12-2157	<a href="#">Briefs</a>	CIVIL RIGHTS: Whether police officer is entitled to qualified immunity regarding excessive force claim; other issues.
Gerardo Ayala v. J. Wolfe, II ( Eagles )		

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12-1167	<a href="#">Briefs</a>	IMMIGRATION: Whether district court erred in granting summary judgment to USCIS in 8 U.S.C. section 1421(c) action to review denial of naturalization application.
Lakshmi Injeti v. United States Citizenship ( Titus )		

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12-2175	<a href="#">Briefs</a>	CIVIL: Authority of arbitrator to render award against individual appellant; jurisdiction of arbitrator; propriety of arbitration award in light of settlement agreement between parties.
Kiran Dewan, CPA, P.A. v. Arun Walia ( Bennett )		

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Butzner En Banc Courtroom 201  
9:30 a.m.

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12-2452	<a href="#">Briefs</a>	INSURANCE: Standing to litigate policy coverage in declaratory judgment action; application of equitable estoppel to prevent insurer from denying coverage; other issues.
First Financial Insurance Comp v. Tonya ( Gergel )		

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12-2269	<a href="#">Briefs</a>	CIVIL: Whether court has subject matter jurisdiction over breach of contract claim between motor carrier and shipper.
Gaines Motor Lines, Inc. v. Klaussner ( Beaty )		

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PANEL III  
Tan Courtroom (Room 223)  
9:30 a.m.

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12-1943 [Briefs](#) EMPLOYMENT LAW: Issues related to claims under S.C. Payment of Wages Act and S.C. Workers' Compensation Act.  
Calvin Barton v. House of Raeford Farms, Inc.  
( Childs )  
Associations: 12-1945, 12-1946

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12-2458 [Briefs](#) CIVIL: Whether district court erred in dismissing Title VII claims for failure to exhaust administrative remedies and as  
Anna Agolli v. Office Depot, Inc.  
( Motz )  
untimely; whether charge includes "continuation sheets" filed after charge.

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12-2010 [Briefs](#) LEGAL MALPRACTICE: Numerous issues regarding evidentiary rulings, jury instructions, and rulings regarding putative  
Zee Company, Inc. v. Williams Mullen  
( Trenga )  
settlement offer.

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Tweed Courtroom (Room 414-D)  
9:30 a.m.

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12-2302	<a href="#">Briefs</a>	IMMIGRATION: Whether substantial evidence supports the agency's adverse credibility determination, which was predicated on omissions and inconsistencies between petitioner's border interview and asylum narrative.
12-1729	<a href="#">Briefs</a>	IMMIGRATION LAW: Whether proper test was applied in determining that petitioner was eligible for withholding of removal based upon "persecutor of others" bar; other issues.
12-1738	<a href="#">Briefs</a>	IMMIGRATION: Whether substantial evidence supports the Board's conclusion that Ye failed to demonstrate that he had engaged in "resistance" to China's one-child policy; related issues.
12-4179	<a href="#">Briefs</a>	CRIMINAL: Whether district court erred in denying motion to suppress; other issues.
US v. Shenika Graves ( Quarles )		
Associations: 12-4209		
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12-2085	<a href="#">Briefs</a>	CONTRACT: Whether the district court erred in concluding that former franchisee was not bound by non-disclosure and non-solicitation provisions; other issues.
Devin Hamden v. Total Car Franchising Corp ( Turk )		

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12-2212	<a href="#">Briefs</a>	CIVIL: Whether the district court erred in dismissing plaintiff's claims under the Federal Tort Claims Act pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction.
Maria Durden v. US ( Dever )		

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12-4630	<a href="#">Briefs</a>	CRIMINAL: Multiple issues arising from convictions for conspiracy to distribute cathinone.
US v. Suado Ali ( Ellis )		

Associations: 12-4631, 12-4632, 12-4672, 12-4657, 12-4674, 12-4675, 12-4676, 12-4679, 12-4682, 12-4687, 12-4699, 12-4700

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Red Courtroom (Room 412)  
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12-2001	<a href="#">Briefs</a>	CIVIL: Whether the district court erred by summarily enforcing a settlement agreement.
Medicine Shoppe International, v. ( Bredar )		
12-7722	<a href="#">Briefs</a>	CIVIL RIGHTS: Whether detention center officers are entitled to qualified immunity in "failure to protect" suit under 42 U.S.C. section 1983.
James Denny v. Mark Tucker		
12-2161	<a href="#">Briefs</a>	ATTORNEY FEES: Whether the district court abused its discretion in denying attorney's fees under the Equal Access to Justice Act.
US v. 515 Granby, LLC ( Moon )		
12-2498	<a href="#">Briefs</a>	FAIR AND EQUITABLE TOBACCO REFORM ACT: Whether USDA's methodology for allocating statutory assessments among six classes of tobacco products complies with the Act; other issues.
Philip Morris USA, Incorporate v. Thomas ( Hudson )		

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Butzner En Banc Courtroom 201  
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12-2513	<a href="#">Briefs</a>	FALSE CLAIMS ACT: Challenge to district court's dismissal of complaint on the basis that defendants were not persons subject to the FCA.
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12-2279	<a href="#">Briefs</a>	IMMIGRATION: Whether substantial evidence supports the denial of petitioners' future persecution claim, predicated on petitioners' claimed violation of China's birth planning policy and Christian faith.
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12-1887	<a href="#">Briefs</a>	IMMIGRATION: Whether substantial evidence supports the IJ's finding that both petitioner's testimony and his corroborating evidence were incredible; whether Board engaged in impermissible fact-finding.
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12-1617	<a href="#">Briefs</a>	PRODUCT LIABILITY: Whether the district court erred in barring contributory negligence defense; sufficiency of the evidence and damages issues.
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12-2513	<a href="#">Briefs</a>	FALSE CLAIMS ACT: Challenge to district court's dismissal of complaint on the basis that defendants were not persons subject to the FCA.

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PANEL III  
Tan Courtroom (Room 223)  
9:30 a.m.

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12-5035 [Briefs](#)  
US v. Jimmy Hunter  
( Dever )

CRIMINAL: Whether, under Miller v. Alabama, 132 S. Ct. 2455 (2012), ACCA designation based on adult convictions for juvenile conduct violates Eighth Amendment.

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12-2127 [Briefs](#)  
Garon Reeves v. IRS

BANKRUPTCY: Whether fully encumbered property in which debtors have taken their allowed exemption may be sold pursuant to 11 U.S.C. section 724(b), under an agreement with secured creditor that assigns a portion of its claim to the trustee for the benefit

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Tweed Courtroom (Room 414-D)  
9:30 a.m.

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12-4775	<a href="#">Briefs</a>	CRIMINAL: Whether the district court erred in denying Kerr's motion to vacate his 18 U.S.C. section 922(g)(1) conviction and resentencing him as an armed career criminal.
US v. Norman Kerr ( Tilley )		
12-2100	<a href="#">Briefs</a>	SOCIAL SECURITY: Whether ALJ properly concluded claimant did not meet requirements of Listing 12.05C; whether substantial evidence supports ALJ's residual functional capacity assessment; whether vocational expert's testimony was reliable.
Jeffery Guiton v. Carolyn W. Colvin ( Beaty )		
12-2241	<a href="#">Briefs</a>	CONTRACT LAW: Whether summary judgment was proper on the question of modification of subcontract; whether sanction of dismissal was proper; other issues.
Projects Management Company v. DynCorp ( Ellis )		
12-2232	<a href="#">Briefs</a>	CIVIL: Whether district court erred in finding parties bound by oral settlement agreement; other issues.
Prospect Capital Corporation v. Adkisson ( Beyer )		
Associations: 12-2264		

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PANEL V  
Gold Courtroom (Room 348)  
9:30 a.m.

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12-2170	<a href="#">Briefs</a>	EMPLOYMENT DISCRIMINATION: Whether district court erred in granting employer's summary judgment motion on claims of gender discrimination, hostile work environment, and retaliation; other issues.
Noah Nathan v. Takeda Pharmaceuticals ( Trenga )		
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12-4061	<a href="#">Briefs</a>	CRIMINAL LAW: Multiple issues arising from trial and sentencing on charges of conspiracy to provide material support to terrorists.
US v. Mohammad Hassan ( Flanagan )		
Associations: 12-4063, 12-4067		
<hr/>		
12-2272	<a href="#">Briefs</a>	CONSTITUTIONAL LAW: Whether the district court erred in dismissing equal protection, due process and dormant Commerce Clause claims regarding Virginia's certificate of need program.
Colon Health Centers v. Bill Hazel ( Hilton )		

PANEL VI  
Blue Courtroom (Room 339)  
9:00 a.m. \*\*

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12-4856	<a href="#">Briefs</a>	CRIMINAL: Whether the district court's consideration of factors under 18 U.S.C. section 3553(a)(2)(A) (2006) in imposing sentence upon revocation of supervised release constituted plain error.
US v. Austin Webb, Jr. ( Moon )		
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12-4664	<a href="#">Briefs</a>	SENTENCING: Whether sentencing consideration was improper; other issues.
US v. Randall McGee ( Johnston )		
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12-4319	<a href="#">Briefs</a>	CRIMINAL: Whether district court erred in denying motions to suppress evidence involving show-up identification and denying judgment of acquittal in carjacking case; other issues.
US v. John Franklin ( Garbis )		
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12-2360	<a href="#">Briefs</a>	ERISA: Whether district court properly entered summary judgment in favor of plan administrator on claims for wrongful denial of short-term disability and long-term disability benefits.
Beth Cosey v. The Prudential Insurance Co. ( Schroeder )		

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PANEL I  
Red Courtroom (Room 412)  
8:30 a.m.

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13-1418	<a href="#">Briefs</a>	CREDIT LAW: Whether the district court erred in finding plaintiff failed to state a claim under the federal Equal Credit Opportunity Act and the Maryland Equal Credit Opportunity Act; other issues.
Kellie Ballard v. Bank of America, NA ( Titus )		
12-4642	<a href="#">Briefs</a>	CRIMINAL: Whether variance sentence imposed for illegal reentry conviction is substantively reasonable.
US v. Lucio Deleon-Ramirez ( Payne )		
12-4680	<a href="#">Briefs</a>	CRIMINAL: Propriety and reasonableness of upward departure under USSG section 4A1.3(a)(4)(B), p.s.; substantive reasonableness of alternative variant sentence.
US v. Rodney Burrell ( Dever )		
12-4853	<a href="#">Briefs</a>	SENTENCING: Whether the district court erred in sentencing defendant as a de facto career offender; reasonableness of upward variant sentence.
US v. Demeco Richardson ( Flanagan )		

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8:30 a.m.

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12-4509 [Briefs](#)  
US v. Rodney Lucas  
( Dever )

CRIMINAL: Whether Lucas' sentence is procedurally and substantively reasonable.

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12-2287 [Briefs](#)  
US ex rel. Steven May v. Purdue Pharma L.P.  
( Berger )

FALSE CLAIMS ACT: Whether qui tam action was properly dismissed on ground of res judicata; other issues.

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12-4426 [Briefs](#)  
US v. Armond Dowdell  
( Blake )

CRIMINAL: Whether the search warrant issued for Dowdell's residence was supported by probable cause; other issues.

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Tan Courtroom (Room 223)  
8:30 a.m.

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12-4358	<a href="#">Briefs</a>	CRIMINAL: Whether the omnibus clause of 26 U.S.C. section 7212(a) is unconstitutionally vague and overbroad; jury instructions; other issues.
US v. Richard Jaensch		
( Lee )		

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12-4901	<a href="#">Briefs</a>	CRIMINAL: Whether the district court improperly applied a five-level Guidelines enhancement, pursuant to USSG section 2G2.2(b)(3)(B), based on McManus' use of the "GigaTribe" file-sharing program.
US v. William McManus		
( Eagles )		

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12-4486	<a href="#">Briefs</a>	CRIMINAL: Whether Robertson was "seized" for purposes of the Fourth Amendment and whether his consent to search his person was knowing and voluntary.
US v. Jamaal Antonio Robertson		
( Eagles )		

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12-4167	<a href="#">Briefs</a>	CRIMINAL: Sufficiency of evidence to support mail and wire fraud convictions; other issues.
US v. Lamondes Williams		
( Bredar )		

Associations: 12-4247

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12-5043	<a href="#">Briefs</a>	CRIMINAL: Whether reasonable suspicion justified officer's frisk of passenger following traffic stop.
US v. Decarlos George ( Boyle )		
11-5043	<a href="#">Briefs</a>	SPEEDY TRIAL ACT: Whether continuance and/or pro se motion to relieve counsel tolled thirty-day period under 18 U.S.C.A. section 3161(b) (West 2000 & Supp. 2012); other issues.
US v. Jenerette Dixon ( Legg )		
12-2316	<a href="#">Briefs</a>	IMMIGRATION: Whether the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 abrogated the doctrine announced in Rosenberg v. Fleuti, 374 U.S. 449 (1963).
Gurpinder Othi v. Eric Holder, Jr.		
12-4828	<a href="#">Briefs</a>	CRIMINAL: Issue of first impression concerning whether the court abused its discretion in imposing supervised release term on deportable alien in light of U.S.S.G. section 5D1.1(c).
US v. Carlos Bautista-Villanueva ( Quarles )		

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